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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,438	12/08/2003	Martin Schnabel	CM2713Q	2354

27752 7590 08/29/2006

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EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20060823

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

**Office Action Summary**

Application No.

10/730,438

Applicant(s)

SCHNABEL ET AL.

Examiner

Laura C. Hill

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see pages 3-7, filed 22 June 2006, with respect to the rejection(s) of claim(s) 1-4 and 6-7 under McCormack (WO 00/38915), claim 5 under McCormack in view of Tao et al. (WO 99/32164), and claims 8-9 over McCormack in view of Schleinz (US 5,612,118) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Tao et al. (WO 99/32164) and Schleinz (US 5,612,118) as discussed below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tao et al. (WO 99/32164; herein 'Tao'). Tao discloses film comprising non-woven material and microporous film (page 1, lines 28-30, page 11, lines 27-31) used for diaper 50 back sheet 52 (page 10, lines 1-3) having single or multiple ornamental discernible printed design graphics 20 via flexographic and gravure printing processes (page 8, lines 14-16, figures 1 and 4) and said film composite having an "L value" of 93.46, "a value" of -0.24 and "b value" of 0.35 (page 3, lines 2-9, page 8, lines 19-21, page 13, lines 9-13), said graphic not covering more than about 60% of the back sheet

(figures 1-2). [It is noted that “flexography” is a printing technology that uses flexible plates to carry an image to a given substrate via a low viscosity *ink*—as defined by Schleinz, US 5,458,590, column 4, lines 2-5.]

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tao et al. (WO 99/32164; herein ‘Tao’). Tao inherently discloses the opacity values and distance between a rear core end edge and rear end edge since the disposable absorbent article is disclosed as discussed above with respect to claim 1. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Alternatively, Tao *does not expressly disclose* a distance or opacity value. Opacity is a result-effective variable since it is a result of the type of materials used. The distance between rear waist edge and absorbent core end edge is a result effective variable since it is a result of the diaper overall dimensions and absorbent core

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dimensions. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Tao with the opacity and distance between rear waist edge and absorbent core end edge values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao et al. (WO 99/32164; herein 'Tao') in view of. Tao *does not expressly disclose* a half-toning printing process in which one of the surfaces of the polymeric film or non-woven web that comprise the back sheet is covered with an opaque or transparent ink while a second area is covered with the same ink. **Schleinz** discloses a training pant 20 having outer cover 42 comprising elasticized substrates 50,54 with a plurality of graphics 46 printed on outer surface 44 of outer cover 42 (column 3, lines 35-40 and 54-56, column 4, lines 21-26 and 40-43), said graphics printed using a semi-tone/half-toning process on two different areas of the composite outer cover 42 in order to eliminate blurred or ghost graphics (column 5, lines 15-27, column 6, lines 7-19 and 47-50, figures 1-3). One would be motivated to modify the printed graphics of Tao with the half-toning printing process of Schleinz for improved graphic image quality since both references disclose disposable absorbent wearing articles with back sheets having printed graphics thereon. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the printed graphics and thus provide half-toning process printed graphics.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

